# SEDUCTION AS A CRIME

Seduction, in its criminal aspects, is a matter to which the attention of students of criminal law, of comparative legislation, and of sociology may be directed with profit. As a crime, it is peculiar in that, in several jurisdictions, the defendant may prevent his being punished by marrying the woman in the case even after a verdict of guilty has been returned against him. As a study of comparative legislation, it is of interest in revealing the utter lack of uniformity among jurisdictions whose social conditions are essentially the same. To the student of sociology, it presents a perplexing problem as to what the ideal enactment on the subject should embody. It is now thirty-eight years since an article on this subject appeared in the Criminal Law Magazine, volume three (1882). Hence, a re-examination of the statutory provisions and of some of the most significant decisions on the subject may be of interest.

## I. Statutory Provisions

Of the fifty jurisdictions comprising the forty-eight states of the Union, Alaska and the District of Columbia, thirteen have no statutory provisions for the criminal prosecution of seduction as such.[1] In the other thirty-seven jurisdictions in which seduction is a crime have statutes covering this matter.[2]

*Seduction Defined.* Subject to the limitations and exceptions to be noted and discussed hereafter, *seduction* as a crime may be defined as the act of a male person in having intercourse with a woman of chaste character under promise of marriage, or by the use

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[1] Del., Fla., Ida., La., Me., Md., Mass., Nev., N. H., Tenn., Utah, Vt., and W. Va.

[2] Ala. Criminal Code (1907) § 7776; Alaska Comp. Laws (1913) § 2003; Ariz. Penal Code (1913) § 239; Ark. Stat. (Kirby, 1904) § 2043-2044 (Statutes 1916, § 2216-2218); Cal. Penal Code (Deering, 1909) § 268, 269; Colo. Ann. Stat. (Gabriel, 1912) § 1900; Conn. Genl. Stat. (1918) § 6378; D. Col. Code (Torbert, 1919) § 873; Ga. 6 Ann. Code (Park, 1914) § 378, 379, p. 251-53; Ill. 2 Ann. Stat. (J. & A., 1913) c. 38 (Criminal Code) § 3936; Ind. 1 Ann. Stat. (Burns, 1914) § 2120, 2354; Iowa Comp. Code (1919) § 8610-12; Kan. Genl. Stat. (McIntosh, 1915) § 3397; Ky. 1 Stat. (Carroll, 1915) § 1214; Mich. Comp. Laws (1915) § 15468; Minn. Gen. Stat. (1913) § 8662; Miss. Ann. Code (Hemingway, 1917) § 1108; Mo. 2 Rev. Stat. (1909) § 4478; Mont. 2 Rev. Code (1907) § 8344; Neb. Rev. Stat. (1913) § 8793; N. J. 2 Comp. Stat. (1910) p. 1761; N. Mex. Ann. Stat. (1915) § 1499; N. Y. Cons. Laws (1909) c. 40 (Penal Law) Art. 195, § 2175-77; N. C. 2 Rev. Laws (Pell, 1908) § 3354 (Jerome's Crim. Code § 1044); N. D. 2 Comp. Laws (1913) § 9575, 9576; Ohio, 6 Ann. Genl. Code (P. & A. 1912) § 13,026, 13,671; Okla. 1 Rev. Laws (1910) § 2423, 2424; Rev. Laws (1915) § 2424*a*; Ore. 1 Laws (Lord, 1910) § 2076; Pa. 1 Purdon's Digest (13th ed. 1905) § 460, p. 1010; R. I. Genl. Laws (1909) p. 1276; S. C. 2 Code of Laws (1912) Criminal Code § 389; S. D. Rev. Code (1919) § 4103, 4104; Tex. Complete Stat. (1920) Penal Law, Art. 1447-1451; Va. Ann. Code (Pollard, 1904) § 3677, 3679, 2 (Pollard, Supp. 1910) § 4410, 4413; Wash. Code (Remington, 1915) § 2441; Wis. 2 Stat. (1919) § 4581; Wyo. Comp. Stat. (Mullen, 1910) § 5907.

of enticement or persuasion. It differs from *abduction* in that the latter involves a taking away of the person; and from *rape with consent* in that the age of the female may be considerably higher and, in some jurisdictions, is immaterial. Though in the strict sense of the terms, a female may be seduced without being debauched, or *vice versa,* the crime of seduction as defined by statute necessarily includes intercourse.[3] The statutes differ considerably on the various elements of the offense.

1. *Promise of Marriage.* In twenty-two jurisdictions, an essential element of the crime of seduction is a promise of marriage on the part of the defendant.[4] In New Jersey and Wisconsin, a promise of marriage is necessary for conviction if the defendant be an unmarried man; while in Arkansas and Mississippi, the prosecution must show either a promise of marriage or a feigned or pretended marriage. The provision in New York is similar. The defendant must have promised to marry, or make a false representation to the woman that he is married to her. In other words, in twenty-seven of the thirty-seven jurisdictions where seduction is a crime, an unmarried man cannot be convicted of the offense except upon proof of a promise of marriage, or a feigned marriage.

Of the other eleven jurisdictions, six[5] provide merely that if a person "shall seduce" any woman of the character described, the offense is complete. In the other four of the eleven jurisdictions, a verbatim copy of the words of the statutes must be given. In Alabama, the statute reads, "Any man who, by means of temptation, deception, arts, flattery, or a promise of marriage . . . " In Georgia, it is provided that, "If any person shall by persuasion and promises of marriage or other false and fraudulent means, . . . " In Colorado, a promise of marriage is necessary if the female be past the age of sixteen, but the offense is complete if one "shall, without such promise of marriage, seduce . . . any unmarried female . . . under the age of sixteen years." In Rhode Island, the significant words are, "Whoever . . . by false pretenses, false representations or other fraudulent means, procures . . . "

In jurisdictions wherein a promise of marriage is an essential element of seduction, the courts are practically unanimous in holding that a promise to marry only on condition that pregnancy result from the intercourse is not sufficient to sustain a conviction.[6] This view is defended by *Justice* Bean, in *State* v. *Adams,*[7] as follows: "[Where

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[3] *State* v. *Reeves* (1889) 97 Mo. 668, 10 S. W. 841.

[4] Ala., Ariz., Cal., Ind., Kan., Ky., Minn., Mo., Mont., Neb., N. Mex., N. C., N. D., Ohio, Okl., Ore., Pa., S. C., S. D., Tex., Va., and Wyo.

[5] Conn., D. Col., Ill., Iowa, Mich., and Wash.

[6] *Hamilton* v. *United States* (1914) 41 App. D. C. 359 and note to this case in 51 L. R. A. (N. S.) 809.

[7] (1893) 25 Ore. 172, 35 Pac. 36.

the man promises to marry] the mutual promise of the woman is implied from her yielding to the solicitations of her seducer under his promise of marriage, and the promise becomes absolute. But when the seduction is accomplished by means of a promise of marriage, to be performed only upon the condition that the intercourse results in pregnancy, no promise of the woman can be implied from such yielding, and it seems to us the contract smacks too much of a corrupt and licentious bargain to fall within the statute. How can it be claimed that a pure minded woman is led astray and her ruin accomplished under a promise of marriage which, with her assent, amounts to nothing more than a mutual agreement to engage in illicit relations so long as pregnancy does not result, and which neither party expects nor intends shall be fulfilled except upon the happening of an event which may never occur?" However, where the statute expressly covers seduction and says nothing about promise of marriage, such a conditional promise of marriage may be sufficient to convict. [8]

In jurisdictions wherein the statute is not confined to seduction under promise of marriage, but expressly covers seduction, it is interesting to note that the statute has been construed to be broad enough to cover practically every case of intercourse with consent. "The word 'seduce' [in such statutes] is used in its ordinary legal meaning, and implies the use of arts, persuasions, or wiles to overcome the resistance of the female who is not disposed, of her volition, to step aside from the path of virtue. . . . Any seductive arts or promises, where the female involuntarily and reluctantly yields thereto, are sufficient." [9] Possibly criminal prosecutions for seduction in such jurisdictions may be based on mere love-making of a character which has been held sufficient to render one liable in civil cases for damages for seduction. [10]

2. *Chastity of Woman.* The statutes punishing seduction generally prescribe that the woman seduced shall have been of "previous" or "previously chaste character", [11] "of good repute", [12] of "good repute for chastity", [13] "virtuous", [14] not "unchaste", [15] or, not "lewd and unchaste". [16] In Rhode Island, the woman must not have been "a common prostitute or of known immoral character". In five juris-

[8] *State* v. *O'Hare* (1904) 36 Wash. 516, 79 Pac. 39.
[9] *Ibid.* p. 518.
[10] *Hawn* v. *Banghart* (1888) 76 Ia. 683, 39 N. W. 251; *Clark* v. *Fitch* (N. Y. 1829) 2 Wend. 459.
[11] Alaska, Cal., Colo., D. Col., Ill., Iowa, Minn., Miss., Mont., N. Y., N. D., Okla., Ore., S. D., Va., Wash., Wis.
[12] Kan., Mo., Pa.
[13] Ariz., Ind., Neb., N. J., N. Mex., Ohio, Wyo.
[14] Ga., N. C.
[15] Ala.
[16] S. C.

dictions, [17] the statute says nothing about the character of the female. However, in all of these except Arkansas, the statute expressly provides for the punishment of "seduction" and there is an obvious impossibility of seduction where utter unchastity exists. Hence, in Arkansas, the Supreme Court has declared that, "In every prosecution for seduction the character of the seduced female is involved in the issue. And character means in this connection, not her general reputation in the community, but the possession of actual personal chastity." [18]

It is quite obvious that in all jurisdictions where seduction is made a crime, lewd women are not intended to be protected by the statute, nor do the legislators intend that there shall be "a reward for unchastity accorded to a class of adventuresses who may be expected to be swift to profit thereby". [19] "To hold otherwise would be to break down all distinctions between the virtuous and vicious, and to place the common bawd on the same plane with the virtuous woman." [20]

3. *Pregnancy.* In but one jurisdiction, namely, New Jersey, the statute expressly provides that an essential element of the crime of seduction shall be pregnancy resulting from the act of the accused. In all the other thirty-six jurisdictions, the statutes make no mention of pregnancy.

4. *Age of Woman.* In twenty-one [21] of the thirty-seven jurisdictions, no maximum age limit as to the woman seduced is fixed by statute.

In Mississippi, the woman must be "over the age of eighteen years". She must be under twenty-five in Texas; under twenty-one in eight states; [22] between sixteen and twenty-one in the District of Columbia; under twenty in North Dakota; and under eighteen in Arizona, Illinois and Ohio. In Colorado, if the seduction be accompanied by a promise of marriage, the woman may be of any age, but if the seduction occur without such promise, the female must be under sixteen. In New Jersey, the woman may be of any age if the accused is a married man, but if he be single, the woman must be under twenty-one.

5. *Age of Defendant.* In thirty-two of the thirty-seven jurisdictions in which seduction is made a crime, no restrictions as to the age of the accused appear in the statutes. In South Carolina, he must be "above the age of sixteen years", in Nebraska and Ohio, he

[17] Ark., Conn., Ky., Mich., and Tex.
[18] *Polk* v. *State* (1883) 40 Ark. 482.
[19] *Per* Strahan, *J.*, in *Patterson* v. *Hayden* (1889) 17 Ore. 238, 239, 21 Pac. 129.
[20] *Ibid.*
[21] Ala., Alaska, Ark., Cal., Ga., Ia., Mich., Minn., Miss., Mont., Neb., N. Y., N. C., Okla., Ore., R. I., S. C., S. D., Va., Wash., and Wis.
[22] Conn., Ind., Kan., Ky., Mo., N. Mex., Pa., and Wyo.

must be over eighteen; in North Dakota, he must be over twenty-one years of age. In New Jersey, if the accused be a married man, no age is specified, but if he be single, he must be "over the age of eighteen".

6. *Requirement that Woman be Unmarried.* In twenty-two jurisdictions, the statute expressly requires that the woman be an unmarried woman or female. In New Jersey, she must be a "single female". However, in eleven jurisdictions[23] the statute speaks of "any female"; while in Mississippi it applies to "any woman, or female child"; and in Rhode Island, to "any woman or girl". In North Carolina, the statute refers to "an innocent and virtuous woman". However, as these provisions have been construed by the courts, it is curious to note that where the statute requires that the woman be "unmarried", women who have been married have been held to be within the protection of the statute; while, on the other hand, where the statute does not specify that the woman be unmarried, it has been held that a woman who has been married is not entitled to this protection. In South Dakota, the words "an unmarried female" have been held to include a widow;[24] and in Oregon, a divorced woman is considered an unmarried female, for this purpose.[25] At the other extreme, is the decision of the Supreme Court of Mississippi, that, even though the statute does not specify that the woman be unmarried, this element is necessarily implied.[26]

7. *Seduction by Married Man.* The rule in thirty-two jurisdictions is that the seduction statute applies to any person committing the offense, apparently regardless of whether he be married or single. In North Dakota and Texas, it is expressly provided that no person shall be convicted of seduction if, at the time of committing the offense, he was married and such fact was known to the woman. In Virginia and Wisconsin, the defendant may be either married or single; but if he be married, a promise of marriage is not an essential element of the crime. In New Jersey, if the defendant be single, he cannot be convicted if under eighteen years of age, or if the woman be over twenty-one; though no such limitations are made if the defendant be a married man when he committed the act. When the seduction is alleged to have been procured by a promise of marriage, it is obvious that no conviction is proper, if the woman knew at the time that the defendant was married.[27]

8. *Marriage or Offer to Marry as Defense.* It is in reference to the marriage of the persons concerned, or an offer to marry on the

[23] Ark., Conn., D. Col., Ind., Kan., Ky., Neb., Ohio, Pa., Wash., and Wyo.
[24] *State* v. *Eddy* (1918) 40 S. D. 390, 167 N. W. 392.
[25] *State* v. *Wallace* (1916) 79 Ore. 129, 154 Pac. 430.
[26] *Norton* v. *State* (1894) 72 Miss. 128, 16 So. 264, 18 So. 916.
[27] *Wood* v. *State* (1873) 48 Ga. 192; *Callahan* v. *State* (1878) 63 Ind. 198; see *supra,* footnote 17.

part of one accused of seduction, as a bar to the prosecution, that the greatest variation in the statutes punishing seduction exists. In twelve states [28] the marriage of the parties, apparently at any time, constitutes a bar to the prosecution. In Alaska, the same is also true of "an offer to marry in good faith". On the other hand, no mention of marriage as a defense appears in the statutes of twelve jurisdictions. [29] Nevertheless on professed grounds of public policy and decency, the Supreme Courts in Indiana and Michigan have held that no prosecution for seduction can be maintained after the intermarriage of the parties. [30] But Kansas has declined to recognize such a defense, in the absence of any statutory provision making it a bar to the prosecution. [31] The rule in the remaining jurisdictions is that marriage or offer of marriage is a defense, or works a suspension of punishment, depending upon the good faith of the accused and the time when his offer of marriage is made.

In California, the accused, to escape conviction, must marry the woman before the finding or filing of an indictment or information against him.

In Texas, he must marry her before pleading to the indictment, in which case he may be prosecuted for "abandonment after seduction and marriage", if he abandons his wife within two years after marriage. An offer, in good faith, to marry the woman at any time before pleading to the indictment is made a bar to the prosecution, if such offer be refused by the woman. These defenses are not open, however, to one who was married at the time of the seduction. A statutory provision in Texas for mere suspension of the prosecution for seduction on the intermarriage of the parties and its revival within two years in case of misconduct on the part of the defendant, was declared unconstitutional. [32]

In Georgia, the marriage must occur before arraignment and pleading, and not otherwise; and a bond conditioned for the support of the female and child, if any, for five years, must be given; or, if the accused be unable to give bond, the prosecution is merely suspended until he lives with the female in good faith for five years.

In Arizona, Missouri, and New Mexico, the marriage must occur before the trial. In Arizona and New Mexico a *bona fide* offer to marry, if rejected by the woman, is equally a bar. But in Missouri, while the intermarriage of the parties before the jury is sworn to try

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[28] Alaska, Ill., Minn., Mont., N. Y., Okla., Ore., S. C., S. D., Va., Wis., and N. C.

[29] Ala., Conn., D. Col., Ind., Kan., Mich., Miss., Neb., Ohio, Pa., R. I., and Wyo.

[30] *State* v. *Otis* (1893) 135 Ind. 267, 34 N. E. 954; *People* v. *Gould* (1888) 70 Mich. 240, 38 N. W. 232.

[31] *In re Lewis* (1903) 67 Kan. 562, 73 Pac. 77.

[32] *Waldon* v. *State* (1906) 50 Tex. Crim. Rep. 512.

the defendant is a bar to the prosecution, an offer to marry is expressly made no defense.

In North Dakota, the marriage is a bar at any time before conviction, while an offer in good faith to marry, if made before the case is submitted to the jury, bars the prosecution. But a defendant who was married at the time of committing the offense cannot avail himself of these defenses.

In Colorado, marriage "prior to the judgment" of conviction of the crime is a bar. The same is true in Iowa, though in case of marriage to escape prosecution, followed by desertion, the defendant is made guilty of a misdemeanor.

In Washington, intermarriage before judgment stays the proceedings for three years, during which time the prosecution may be revived in case of non-support or desertion.

In New Jersey, if the accused be a single man, marriage even after sentence ends the imprisonment of the accused.

In Arkansas and Kentucky, the marriage of the parties, suspends the prosecution. In Arkansas, such prosecution may be revived "at any time" if the defendant deserts or abandons the woman without cause; while in Kentucky no such revival results unless the desertion occurs within three years after the marriage.

*Corroborating Testimony.* Twenty-two jurisdictions will not allow a conviction on the uncorroborated testimony of the woman seduced; or the statute provides that her testimony must be corroborated to the extent required as to the principal witness in case of perjury. In fifteen jurisdictions,[33] however, no such requirement appears to be made.

*Punishment.* In nearly every jurisdiction, seduction is made a felony, and the accused, upon conviction, may be imprisoned for a maximum term ranging from one to twenty years. But in South Carolina the offense is made merely a misdemeanor; and in New Jersey, a "high misdemeanor".

## II. Recent Cases

That the crime of seduction is one of not infrequent occurrence is evident from a glance at the more recent volumes of the *American Digest.* In the Decennial Edition, covering the years 1897 to 1906, the paragraphs on the crime of seduction occupied 17½ pages, while rape covered but 67½, and seduction in its civil aspects but 7. This was true though seduction is not made a crime, as yet, in thirteen states; and doubtless, in most instances, the wrongdoer was forced to marry the woman to escape punishment, thus forstalling any criminal proceedings which may have been contemplated.

[33] Alaska, Ariz., Cal., Conn., D. Col., Ga., Ky., Mich., Mont., N. Mex., N. D., Ore., S. D., Wash., and Wyo.

We may well imagine the increasing importance which would attach to this offense, if the other thirteen states enact similar statutes; and if, as we have found in twenty-one jurisdictions, the protection of the statute is extended to women of all ages. Such a provision is not unlikely with the increasing demand for the protection of women and agitation for a single standard of morality. Witness the so-called "White Slave" laws. Furthermore, we should not be unmindful in this connection of the gradually awakening conscience of society in favor of the protection of illegitimate children and against the humiliation and torture of centuries inflicted upon them for offenses not of their own commission. What greater benefit, it may be asked, can be conferred by law on a nameless child than a name? However, there is an obvious danger in departing from settled legal doctrine in the effort to set matters aright in such cases.

## III. Analysis of Elements in the Offense

Stripped of the varying details which we have noticed in our resumé of these statutes, it is quite obvious that the main purpose running through them is to compel an unmarried man who has had intercourse with a virtuous woman under promise of marriage to keep his promise, under penalty of going to the penitentiary, an alternative which is doubtless often sufficient to give strength to weakening knees on the way to the marriage altar. While marriage in such cases is doubtless a consummation devoutly to be wished by many of the parties concerned, to say nothing of the welfare of those yet unborn, is it the proper function of a criminal court to compel the specific performance of a contract of marriage, or of any other contract? It takes us back nearly a hundred years, to the flourishing days of the ecclesiastical courts in England, to find any suggestion of the specific performance of a contract of marriage in a court with equity jurisdiction.[34]

Should the primary purpose in the enforcement of criminal law be prevention and reparation so far as possible just as the function of imprisonment is ceasing to be punitive and becomes more and more merely correctional? If so, how far should the doctrine be carried? Are there any other contracts or crimes in which a similar course might be pursued with profit? In so far as contracts of personal service are concerned, the United States Supreme Court is apparently unwilling to have a laborer confronted with the alternative of fulfilling his contract or going to jail.[35] As to reparation as a bar to criminal proceedings, it is obvious that no reparation is possible in homicide. But as to crimes against property, would it be advisable to provide expressly, by statute, that, for example, a defendant who has

[34] Fry, *Specific Performance of Contracts* (3rd Am. ed. 1884) 917.
[35] *Bailey* v. *Alabama* (1911) 219 U. S. 219, 31 Sup. Ct. 145.

been indicted for stealing a sum of money may escape punishment by paying back to the injured party the sum in question, one, two, or three-fold? While it is true that, in our metropolitan centers, the overburdened prosecuting attorney is generally willing to drop prosecutions in such cases, if the injured party consents, in more sparsely settled communities there are numerous instances of this character in which the prosecutor insists on going ahead with the criminal proceedings, even though the injured party has forgiven and forgotten the offense and is even opposed to further prosecution. In such communities, a statute of this character would effectually tie the hands of an over-zealous prosecutor and would, doubtless, cause restitution in many cases.

As to the necessity of a *promise of marriage* [36] as the inducement to the consent of the female, there is good reason for such a restriction. To make seduction *eo nomine* a crime, without attempting to define the term is to cast us on a sea of uncertainty as to the meaning of a word which was quite indefinite and not clearly defined at common law. It is broad enough, as we have seen, to include practically every form of love-making accompanied by intercourse, and it may be seriously doubted if such conduct should be visited with imprisonment in the penitentiary, regardless of the age of the parties, unless society is prepared to make all sexual offenses felonies.

The limitation of the protection of the statute to *virtuous women* [37] and the requirement of *corroboration of the testimony* [38] of the women appear to place restrictions which are necessary and desirable upon this class of prosecutions. However, it may be doubted if these have always had the desired effect. Even though a woman has fallen, yet, if at the time of the seduction she has reformed, she has been shielded by the statute. [39] In such cases, it has been said that "she may have the virtue of chastity, not in the high degree of the woman who has not strayed, but yet within the meaning of the statute entitling her to protection". [40] As to the corroborating testimony, it seems that it need be merely such "as, in the nature of the case is obtainable", and may even be "circumstantial and apparently slight in character". [41]

The requirement that *pregnancy* [42] result from the seduction is inserted, as we have seen, only in the statute of New Jersey. Unquestionably, in a large percentage of cases, pregnancy has been the sole cause of the prosecution. But should it be made an essential element of the crime? If the primary purpose of the statute is the

[36] See *supra*, p. 145.
[37] See *supra*, p. 146.
[38] See *supra*, p. 150.
[39] *State* v. *Carron* (1865) 18 Iowa 372.
[40] See *supra*, footnote 17.
[41] *State* v. *Lockeby* (1892) 50 Minn. 363, 52 N. W. 958.
[42] See *supra*, p. 147.

protection of the offspring, this requirement in New Jersey is no more than fair. The objection to it appears to be the great difficulty in proving pregnancy particularly in its early stages.[43] Moreover, it might prevent prosecution until the advanced stages of pregnancy, when the latter element could be proven readily, thus giving to the woman far less redress.

As to the *age of the woman*[44] seduced, we have seen that, in certain jurisdictions, the maximum age of the woman is fixed at a point but little beyond that in the statutes punishing rape with consent. With the tendency of recent years to raise the age of consent in the case of rape, would it not be logical to remove entirely the limitation as to age, as the law now stands in twenty-one jurisdictions, or, at least to raise it to the age of twenty-five as in Texas? Where, as in Kansas, the age of consent in case of rape is eighteen years and the maximum in seduction is twenty-one, the statute, as it stands is of little consequence.

As to *marriage, or an offer to marry*[45] as a bar to the prosecution, we have found a great diversity of language. What can be said as to the wisdom of such provisions? According to one writer, "No feature of these seduction statutes renders them more dangerous than that which provides that the defendant may, by marrying the prosecutrix after conviction, escape the penalty of imprisonment. The jury are, by this provision, induced to render a verdict which they would hesitate to render if imprisonment would certainly follow, by the consideration that, after all, even if they do convict, the defendant may, as an alternative from going to prison, in homely phrase, "marry the girl"—a reparation which they think he ought to make if guilty.[46] This objection could be met, in part at least, by the requirement which we have found to exist, in some jurisdictions, namely, that the marriage, to be effective as a bar, be contracted before the beginning of the trial. Even in jurisdictions which do not expressly make marriage a bar, it doubtless has this effect in many instances, not merely because of the indulgence of the prosecutor, but because of the fact that the woman cannot thereafter be compelled to testify against her husband. Space forbids a discussion of the merits and demerits of fixing the time when the marriage must take place, in order to be a bar. There are several possibilities, for instance, prior to the filing of the indictment, prior to pleading to the same, before the trial, or before conviction.

In an ideal enactment, should the marriage suspend or forever bar the prosecution? It has been contended that suspension is prefer-

[43] See (1882) 3 Criminal Law Magazine 344.
[44] See *supra*, p. 147.
[45] See *supra*, p. 148.
[46] (1882) 3 Criminal Law Magazine 343.

able to a bar in such cases.[47] However, at the present day, in view of the many and ingenious devices, both civil and criminal, invented by our legislators and courts for the purpose of compelling men to support their wives, it may be that the woman is adequately protected by virtue of the fact that she is a wife, and it may be advisable not to dig up, after marriage, the old charge of seduction? In other words, in the witty language of counsel, should not the charge of seduction on *de bene esse,* be forever cancelled by a marriage *nunc pro tunc?*[48]

As to an offer of marriage, as the equivalent of marriage actually contracted, we have seen a great divergence of provisions. Should not the offer, in good faith, be the equivalent of marriage? The question is not purely academic. In numerous instances, the woman seduced has refused to marry her seducer, preferring the satisfaction of seeing him go to the penitentiary to a name for her child.[49] "The marriage of the parties is the purpose, intent, hope, and spirit of the statute. Within its keeping, the past misery and shame may be forgotten, the future happiness of both secured. Although the seducer be forced almost to the very doors of the penitentiary before offering to fulfill his promise of marriage, yet having done so in good faith, and his offer having been declined by his victim, he can do no more. The woman, and not the man, defeats the object and purposes of the law."[50] Is not the broken promise the *gravamen* of the offense? Where seduction has been accomplished under a bona fide promise of marriage and the man offers to fulfill his promise can he properly be said to be guilty of seduction?[51]

## IV. Conclusion

In conclusion, it is worthy of note how much more serious is the offense of seduction in most jurisdictions to-day than at common law. In former days, it was but a tort subjecting the seducer to liability in damages to the parent, as master, of the girl seduced, and even this civil liability was hedged about with innumerable and absurd technicalities which prevented the recovery even of damages in many atrocious cases. To-day, we find a large number of jurisdictions sending to the penitentiary the offender who went scot free at common law. Does the man who marries the woman seduced to keep out of the penitentiary, entirely escape punishment? Much, of course, will depend on each individual case. Yet many an accused, however much atonement there may be for the woman in marriage, doubtless feels himself between Scylla and Charybdis.

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[47] (1903) 17 Harvard Law Rev. 63.
[48] *Hamilton* v. *United States* (1914) 41 App. D. C. 359.
[49] See *People* v. *Hough* (1898) 120 Cal. 538, 52 Pac. 846.
[50] *Commonwealth* v. *Wright* (1894) 16 Ky. Law Rep. 251.
[51] See *People* v. *Gould, supra,* footnote 19.